

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,417 &
) 15,424
Appeal of)

INTRODUCTION

The petitioners appeal a decision of the Department of Social Welfare terminating their ANFC benefits from February 1 through March 4, 1998 based on projected income from a new job.

FINDINGS OF FACT

1. The petitioners, L. and C., are ANFC recipients who have one child and are subject to work requirements. On January 16, 1998, the petitioners' eligibility specialist received a notification from the Department of Employment and Training (DET) that L. had not cooperated with work requirements and should be sanctioned until he complied.

2. On January 19, 1998, the petitioners were mailed a notice that their ANFC benefits would be reduced from \$581 to \$478 beginning February 1, 1998, because L. was no longer eligible for benefits because he had failed without good cause to participate in the Reach Up program.

3. However, on January 21, 1998, L.'s caseworker at DET called his DSW eligibility specialist to report that L. had become employed at a pizza restaurant and was working 48 hours per week at \$6.00 per hour, at least for the first two weeks. The note taken by the specialist indicated that

after the first two weeks he was told it is "not positive but is supposed to be full time." This information was obtained by DET through a phone call to the employer but no verification was received in writing. The DSW worker determined, based on that information, that the sanction for non-cooperation should be lifted. He also concluded that the projected income from the employment made the family ineligible for ANFC benefits for the upcoming month of February. He did not speak to L. or C. to verify the information he got from DET, nor did he ever contact L's employer.

4. On January 22, 1998, the eligibility specialist mailed a notice to the petitioners telling them that they would no longer be eligible for the \$478 per month benefit as of February 1, 1998 due to excess household income. The notice told them that their ineligibility had been calculated based on \$1,032 in income (he used a figure of \$6.00 per hour for a forty hour work week) expected to be earned by L. from his employment in February.¹ The notice did not say that the sanction had been removed. It did tell the petitioners that they could be eligible for child care services and advised them to call DSW for more information.

5. Sometime around Monday, January 26, or Tuesday,

¹ The benefit which was being cut was actually \$581 per month since the sanction should have been removed. The \$478 figure appeared because that was the last amount in the computer record before the total termination of benefits occurred.

January 27, C. called the eligibility specialist to say that she did not think L. would make as much money as DSW thought and wanted to know if the February 1 ANFC closure could be avoided. She reported at that time that she thought he had worked only 40, not 48, hours the first week, had been cut back to 35 hours this week and feared his hours might be cut even more. C. stated that L. had received only one paystub so far which showed a forty hour work week. He would not get another until the end of the week on Saturday, January 31.

6. The eligibility specialist told C. that she could only avoid the closure by bringing in paystubs which showed that L. was actually working fewer hours than DET had reported. The worker recalls telling C. that she had to bring the stubs in before February 1, 1998, or the February closure would remain in effect and she would have to reapply for benefits. C. believed that she could avoid closure by bringing the stubs in as soon as she got them. It is probable that the worker did give the information he related to C. and that she misunderstood it.

7. C. came into the welfare office on Monday, February 2, 1998, and brought the January 31 paystub, which L. had received over the weekend along with his paystub from January 24. The January 24 paystub showed he had worked forty hours that week at \$6.00 per hour. The January 31 paystub showed that he had worked thirty-five hours that

week at the same rate of pay. No one was available for her to speak with so she just left the paystubs. When the eligibility specialist saw the stubs he put them into the petitioners' file and, because the case was closed, decided he did not need to take further action until a new application was filed. The petitioners did not get their usual monthly ANFC checks, neither the one mailed at the first of the month nor the one mailed in the middle.

8. On February 19, 1998, C. did come in to file a new application but her application was based on the absence of L. from her home because he had moved out somewhere around the 15th or 16th of February. The eligibility specialist also became aware that L. had quit his job somewhere around the same date. An appointment was made by the eligibility specialist with C. for Monday, February 23. At that time, L.'s income was not at issue since he was out of the home and was not applying for assistance. However, two days later, C. reported that L. had returned to the household. L. was given a referral to Reach Up on February 27 (a Friday when he was seen on an emergency basis), and was told that the ANFC would commence as soon as Reach Up confirmed that he had signed up again. He got a Reach Up appointment on Wednesday, March 4, 1998, attended it and ANFC was started the next day.

9. At hearing, the eligibility specialist testified that if he had seen all of the paystubs before January 31,

1998, he would have projected the family's income at \$967.50 for the month of February which was \$3.00 above the maximum eligibility amount for a family of three (\$964.50). He obtained this figure by adding together the forty hour week and thirty-five hour week, averaging them and multiplying that number by the number of weeks (4.3) in a month. In effect, this method projected a thirty-seven and one-half hour week to the petitioners for the month of February. The eligibility specialist did not explain why he felt that figure was the best estimate of the income the petitioners would receive in February, particularly in light of the fact that the hours were declining.

10. If the assistance group had been able to verify that L. had been cut back to a thirty-five hour work week, they would have had a projected earned income for ANFC purposes of \$903.00--\$210 per week ($\$6.00 \times 35 \text{ hours}$) $\times 4.3$ weeks--for the month of February. The Department concedes that ANFC eligibility would still exist for this family of three if they made up to \$964.67 per month.

11. Evidence supplied by L. showed that he actually earned \$564 from his restaurant job in the month of February, 1998. During the first two weeks of February, he worked thirty-five hours each week and during the third week he worked twenty-four hours before he quit on February 19.

ORDER

The decision of the Department is reversed and benefits for the month of February, 1998 through March 4, 1998 should be calculated and paid to the petitioners based on what they actually earned during the month of February.

REASONS

The amount of benefits to be paid to an ANFC recipient who has earnings from employment is determined through a method of "prospective budgeting" which "means that the amount of payment for any given month will be based on the best estimate of income and circumstances which will exist in that month." W.A.M. 2216.1. The regulations further provide that "[i]nformation about circumstances during the most recent calendar month shall be the basis of the estimate of the assistance group's circumstances during the remainder of the review period until and unless a change in circumstances is reported or otherwise identified." W.A.M. 2216.2.

The Department is required under the above regulations to take a close look at the recipient's income situation when he or she starts working in order to get the clearest idea of what the assistance group's future income is likely to be. It must be concluded that the Department did not do that in this circumstance. The only information the eligibility specialist had on L.'s employment was a note from DET that L. had started to work, that it was supposed

to be full-time but that the hours were "not positive." Based on that information, a forty-hour work week was used to calculate the eligibility of the family for February. No attempts were made to confirm this amount with either the recipient or the employer. Even worse, when C. reported that L.'s hours had been cut in the last week of January and were likely to stay at a lower level, the worker made no attempt to get verification of that information and to readjust the projected income based on that information.

The eligibility specialist told C. that the only way she could verify that change was to bring in a paystub from the last week in January, although he knew or should have known that waiting for the paystub would mean that he could not take a timely action to remedy the erroneously projected income. That verification procedure was incorrect. Although the Department's regulation contemplates that income is usually verified through paystubs, the regulation specifically provides that a "statement of wages" can be obtained from the employer when the "wage earner cannot furnish complete paystubs." W.A.M. 2211.3. This is particularly true when the employment situation has not stabilized:

When earnings have just begun or changed, available paystubs, a statement from the employer on wages and predicted hours of employment, or similar verification

shall be used to make a best estimate of future earnings.

W.A.M. 2211.3

The eligibility specialist in this case did not use all of the tools available to him to make the best estimate of future earnings of this assistance group. He could easily have contacted the employer to confirm the predicted hours of employment or wages during the last week of January before the deadline for termination of the benefits. Or he could easily have informed the petitioners that they could have provided a statement from the employer during that week instead of waiting for the paystub which could not have come into the office before the date of termination. This failure on the part of the worker prejudiced the petitioners with regard to their benefit payments in February and led to their erroneous case closure.

As the Department's decision to close the case for February was not in accordance with its regulations, the case must be reversed. Because it is now precisely known how much the petitioners did make in February of 1998, that figure should be used to calculate the benefits which should now be paid to them for that month and the first few days of March.² Because the matter was determined in favor of

² The figure proposed by the eligibility specialist in paragraph 9 which would have made the family ineligible does not reflect any attempt to accurately project income for the family, but is a wooden use of actual income earned in January to predict income in February without taking into account the declining hours.

petitioners on the prospective budgeting issue, it is not necessary to consider their other arguments about rights to Reach Up services.

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